

**Town of Amherst**  
**Zoning Board of Appeals**

2014 OCT 10 PM 2: 28

*VARIANCE*

AMHERST TOWN CLERK

The Amherst Zoning Board of Appeals hereby grants a Variance, ZBA FY2014-00038, to structurally alter and expand an existing single family dwelling and enlarge a non-compliant lot by adding area and frontage, at 908 South East Street and associated vacant parcel (Map 20D, Parcel 47 and Map 21C, Parcel 3, RLD/ARP Zoning District), with the following conditions:

1. The lot configuration for both lots shall be as shown on the "Subdivision Approval Not Required" plan prepared by Harold Eaton Associates, dated July 10, 2014.
2. Failure to fulfill/complete the Agricultural Preservation Restriction on the 66 acre parcel, as shown on the approved Subdivision Not Required Plan, shall render this variance null and void. In such an event, the non-compliant lot shall come into full conformance with the R-LD Zoning District dimensional requirements.
  - a. If, after one year from the filing of this permit with the Town Clerk, the APR process is not completed, the owner shall appear before the Zoning Board of Appeals at a public meeting to discuss the anticipated timeline for completion.
  - b. No building permit shall be issued for any purpose associated with "Lot 2" as shown on the Subdivision Approval Not Required plan, identified as Book 11464, Page 99, until the APR process is completed.
  - c. In the event that the current or future owner voluntarily initiates the removal of the land from the APR program, the variance shall be rendered null and void as described herein.
3. Prior to the issuance of a building permit for the garage, a complete set of architectural plans and elevations for the existing house shall be submitted to the Zoning Board of Appeals at a public meeting. Once provided, the architectural plans and elevations shall be the basis for the Zoning Board of Appeals to review any substantial changes to the single family dwelling.
4. Any substantial changes to the structure, including changes to siding, windows, structural alterations, and/or additions shall be reviewed and approved by the Zoning Board of Appeals at a public meeting. The purpose of the review is to determine whether changes are significant enough to require modification of the variance.
  - a. The Zoning Board of Appeals determined that the location of the garage door may be moved to the north elevation if the change will not increase building or lot coverage, or will not reduce any setback.
5. The existing barn shown on the approved plan as "to be razed" shall be removed with a validly issued demolition permit prior to the issuance of a building permit for the garage and shall be in compliance with the approved building coverage.

Eric Beal   
Eric Beal  
Amherst Zoning Board of Appeals

10/10/14  
DATE

**Town of Amherst**  
**Zoning Board of Appeals - Variance**

*DECISION*

**Applicant/Owner:** Margaret A. Riley, 908 South East Street, Amherst, MA 01002

**Date application filed with the Town Clerk:** June 5, 2014

**Nature of request:** For a Variance and/or other relief to allow the enlargement of a non-compliant lot by adding area and frontage and to alter an existing, non-compliant, single family dwelling

**Address:** 908 South East Street (Map 20D, Parcel 47 and Map 21C, Parcel 3, R-LD and ARP Zoning District)

**Legal notice:** Published on June 11, 2014 and June 18, 2014 in the Daily Hampshire Gazette and sent to abutters on June 11, 2014

**Board members:** Eric Beal, Tom Ehrgood, Mark Parent

**Staff members:** Jeff Bagg, Senior Planner, Building Commissioner, Rob Morra

**Submissions:** Application form filed with the Town Clerk on June 5, 2014

- Narrative (Exhibit A)
- Building Commissioner letter, dated August 23, 2013
- Attorney letter, dated August 22, 2013
- ANR plan, prepared by Harold Eaton Associates, dated May 6, 2014
- Proposed barn photograph and renderings
- Handbook of Massachusetts Land Use and Planning Law, excerpt of Chapter 8 (Variances) and Chapter 7 (Administration and Enforcement; excerpt only, pages 220-224)

**Site Visit:** June 25, 2014

Eric Beal, Tom Ehrgood, and Mark Parent observed the location of the property on the east side of South East Street, and the following:

- The exterior of the existing single family dwelling currently undergoing extensive renovations.
- The rear of the dwelling, including the existing deck, and view to the farmland and barn to demolished to the east.
- The approximate location of the front and north property lines.
- The approximate location of the proposed building lot to the north.

**Public Hearing:** June 26, 2014

The application was presented by attorney Alan Seewald. The property owners Jim Hoerle and Margaret Riley were present.

Mr. Seewald described the variance request in terms of the submitted written narrative entitled "Exhibit A", summarized as follows:

- The applicant purchased the house lot and her husband, Jim Hoerle purchased the adjacent land in 2013
- Prior to purchasing the properties, the Building Commissioner provided a written opinion that the two lots had not merged and that the house lot, a square 100 foot by 100 foot parcel, did not comply with dimensional requirements when it was created by deed on July 28, 1966. In 1966, the Zoning Bylaw required that a lot in the R-N Zone contain 120 feet of frontage and minimum area of 20,000 square feet.
- Because the lot did not comply when it was created, it is not a protected nonconforming lot, and thus the existing single family dwelling cannot be altered without variance from the Zoning Board of Appeals.
- The intent of this application for a variance is to remove the lot from legal limbo and allow changes be made to the existing house by adding an attached garage. The proposed garage would comply with the current setback requirements.
- The lot would also be changed to add 20 feet of frontage, adding 2,000 square feet to bring it closer to compliance with the 1966 Zoning Bylaw requirements. In addition to the changes to the non-compliant lot, a new building lot would be created that complies with the current Zoning Bylaw requirements. Finally, approximately 66 acres of the remaining land would be preserved in perpetuity as open space/farmland through an Agricultural Preservation Restriction (APR).
- The variance request includes all necessary relief, including lot area, building and lot coverage, and the existing non-compliant setback of the single family dwelling on the south property line. The request is to formalize the lot, with some changes to make it closer to compliance with the 1966 Zoning Bylaw and to allow the garage addition.
- The changes to the site include removal of an existing horse-shoe shaped gravel driveway and removal of an existing, dilapidated barn. Both of these changes would reduce the existing non-compliant lot and building coverage's.

The Board discussed whether this could be considered as a non-conforming lot. Mr. Morra stated that case law suggests that a non-compliant structure or lot, while it cannot be removed once the statute of limitations expires, it doesn't gain protected status. He urged the Board to review the proposal in terms of unique soil, topography, or shape related matters.

The Board discussed the variance criteria of Chapter 40A, which states in part that a variance can only be granted where:

*Such permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.*

The Board discussed the APR program and how it relates to this request. The Board noted that a significant aspect of the proposal is the permanent preservation of 66 acres of adjacent farmland. Without the proposal to put the adjacent land in APR, the non-compliant lot could be increased in area to come much closer to the requirement in the Zoning Bylaw.

The Board discussed whether the variance request should be compared to the requirements of the 1966 Zoning Bylaw or the current Zoning Bylaw. The Board noted that the frontage was increasing from 100 to 120 feet and that the lot area was increasing from 10,000 square feet to 12,000 square feet. However, the Board disagreed with attorney Seewald that the comparison is to the 1966 Bylaw; rather is compared to the current bylaw.

The Board discussed the submitted site plan.

- Lot size– The lot size is increasing by 2,000 square feet, from 10,000 square feet to 12,000 square feet. The Board asked what the area could not be increased further, to be closer to conforming and whether the barn could be relocated to add additional area to the lot.
- Lot shape – The existing lot is square and the proposed lot has an obtuse north property line which appeared to be an unnecessary. The Board asked whether the lot could be made more uniform.
- Frontage – The Board noted that the frontage is increasing by 20 feet, from 100 to 120 feet and that adjacent to the non-compliant lot a conforming building lot is being proposed. On the north side of the building lot, the proposed APR property contains a 97 foot wide section of street frontage. The Board asked why the building lot could not be moved further north reducing the amount of frontage for the APR portion and adding it to the non-compliant lot.
- Lot coverage – The Board noted that the non-compliant lot coverage could be reduced if the size of the lot is larger. The Board determined that it would be critical to ensure that any variance request is the minimum necessary. The Board requested that the site plan be revised to show the proposed arrangement rather than the existing condition.

The Board requested an updated survey/site plan and urged the applicant to reduce the lot coverage and increase the lot size and frontage as much as possible. The Board noted that the written narrative did not provide any information on the actual variance criteria on which to base its findings. The Board requested the applicant provide arguments in terms of unique circumstances related to topography, soil, and shape.

Mr. Parent MOVED to continue the hearing to July 24, 2014. Mr. Ehrgood SECONDED the motion and the Board VOTED unanimously to continue the hearing.

**Public Hearing: July 24, 2014**

The meeting on July 24, 2014 was not properly noticed 48 hours in advance and had to be rescheduled. Mr. Parent MOVED to continue the hearing to September 11, 2014. Mr. Mr. Ehrgood SECONDED the motion and the Board VOTED unanimously to continue the hearing.

**Public Hearing: September 11, 2014**

The following new information was submitted:

- Supplemental Memorandum, dated September 4, 2014
- Barbara Hobson letter, dated September 2, 2014
- Custom Soil Resource Report, dated September 2, 2014
- ANR/Site Plan, prepared by Harold Eaton Associates, dated July 10, 2014

Mr. Seewald described the changes to the site plan as follows:

- The non-compliant lot has been increased by 5,000 square feet, from 10,000 square feet to 15,000 square feet.
- The frontage has been increased from 100 feet to 120 feet.

- The building coverage is reduced from 17.1% to 14.9% and the total lot coverage is reduced from 61.1% to 26.3%.
- The proposed lot line for the non-compliant lot removes the obtuse north line making it more uniform.
- The changes were made to make the requested variances the minimum necessary, noting that the proposed garage will comply with the current setback requirements.

Mr. Seewald described the changes in terms of the September 4<sup>th</sup>, 2014 memorandum. The Board confirmed that the variance will grant relief from the following requirements of the R-LD Zoning District:

- 80,000 square feet required; variance will allow the lot to be 15,000 square feet.
- 200 feet of frontage; variance will allow the lot to maintain 120 feet of frontage.
- Building coverage limit of 10; variance will allow 14.9%.
- Total lot coverage limit of 15%; variance will allow 21%.

After review and discussion, the Board made the following findings in terms of the variance standards of Chapter 40A:

- The shape of the lot is unique as it is currently a square lot of 100 feet by 100 feet created by deed in 1966 and was not compliant with the Zoning Bylaw dimensional requirements established in where the Zoning Bylaw changed in March of 1964.
- The topography of the property is unique in that the northern portion slopes into a drainage ditch thus limiting the ability to further increase the frontage for the non-compliant lot. In order to maintain the requirements of the APR program, it is required to show that there is sufficient frontage to layout a conceptual subdivision of 50 feet. It is this topography which prevents the movement of the proposed building lot further north and increasing the frontage on the non-compliant lot over 120 feet.
- The soils on the property are considered to be prime agricultural soils. As stated in the letter from Ms. Hobson, Massachusetts APR Field Representative, "expansion of the existing house lot to 80,000 square feet would have a detrimental impact on the parcel proposed to be permanently protected by an APR" and "prime farmland and farmland soils of state significance to farming are considered high priority for permanent preservation as they are capable of producing the highest amount of agricultural product with the least amount of input".
- The variance can be granted without substantial detriment to the public good without nullifying or substantially derogating from the intent and purpose of such ordinance or bylaw. The Board found that the variance request makes the non-compliant issues better; increases the area and frontage of the lot, reduces the building and lot coverage, the proposed garage addition complies with current setbacks, and it offers the Town the ability to regulate the property in the future.
- The Board acknowledged the creation of a conforming building lot adjacent to the non-compliant lot. The Board found that the variance allows the non-compliant lot to become closer to "conforming" and that along with the topography and soil conditions, the creating of the building lot does not substantially derogate from the intent and purpose of the Zoning Bylaw.

The Board noted the importance of the APR land and that without it the variance request would likely be denied as the non-compliant lot could otherwise come into full compliance with the lot area requirements.

The Board established conditions of the variance, as follows:

- The design and orientation of the garage. The applicant identified the possibility of constructing a shared driveway on the building lot to serve it and the new garage on the non-compliant lot. The Board found this to be acceptable only if there were no changes to the dimensions established on the site plan, including but not limited to lot coverage.
- The size of the garage is limited to the footprint shown on the survey. Additionally, the Board confirmed that other changes to the dwelling including footprint changes, additions, or exterior alternations would be required to be reviewed by the ZBA. As part of this discussion, the Board determined that elevations for the house should be submitted at a public meeting to establish the baseline for review of subsequent changes.
- The Board discussed a condition whereby no building permit would be issued for the garage until proof of completion of the APR process is submitted. Mr. Seewald explained that the process could still require many months to complete and that his expectation was that the closing on the APR would occur at the end of this fiscal year in June 2015. After discussion, the Board established a one year timeline after which the applicant would have to appear before the Board for an update. Additionally, a condition would prohibit the issuance of a building permit on the adjacent lot until the APR process is concluded. Finally, the Board determined that if the APR is not completed or if the land is voluntarily removed from the APR program, the variance would become null and void requiring that the buildable lot be discontinued and non-compliant lot made fully conforming.
- The Board discussed changes that would be reviewed by the Board, including exterior changes to siding, structural changes, footprint, or additions. It was identified that changes which alter the dimensional established in this variance should require formal modification. The Board noted that a change to the garage door to the north side and changes to the existing deck are contemplated in this decision, and are acceptable as minor changes reviewable at a public meeting.

### Zoning Board Decision

Mr. Beal MOVED to approve the Variance request with conditions. Mr. Parent SECONDED the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Variance, ZBA FY2014-00038, to structurally alter and expand an existing single family dwelling and enlarge a non-compliant lot by adding area and frontage, at 908 South East Street and associated vacant parcel (Map 20D, Parcel 47 and Map 21C, Parcel 3, RLD/ARP Zoning District), with conditions.

Eric Beal (JB)  
ERIC BEAL

Tom Ehrgood  
TOM EHRCOOD

Mark Parent (JB)  
MARK PARENT

FILED THIS 10<sup>th</sup> day of October, 2014 at 2:27 pm,  
in the office of the Amherst Town Clerk Sandra J. Berger.  
TWENTY-DAY APPEAL period expires, October 30, 2014.  
NOTICE OF DECISION mailed this 14<sup>th</sup> day of October, 2014  
to the attached list of addresses by Jeffrey E. Biggs, for the Board.  
COPY OF NO APPEAL issued this \_\_\_\_\_ day of \_\_\_\_\_, 2014.  
NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2014,  
in the Hampshire County Registry of Deeds.

**BOARD OF APPEALS  
AMHERST, MASSACHUSETTS  
RECORD OF APPEALS AND DECISION RENDERED**

Petition of Margaret A. Riley

For A Variance to structurally alter and expand an existing single family dwelling and enlarge a non-compliant lot by adding area and frontage

On the premises of 908 South East Street (Map 20D, Parcel 47) and associated vacant parcel (Map 21C, Parcel 3) RLD/ARP Zoning District

NOTICE of hearing as follows mailed (date) June 11, 2014  
to attached list of addresses and published in the Daily Hampshire Gazette  
dated June 11, 2014 and June 18, 2014

Hearing date and place June 26, 2014 & September 11, 2014 (Town Hall)

**LEGAL NOTICE**  
The Amherst Zoning Board of Appeals will meet on \*Wednesday, June 26, 2014\*, at 6:30 P.M. in the Town Room, Town Hall, to conduct the following business:  
**PUBLIC HEARING:**  
ZBA FY2014-00038 - Margaret Riley - For a Variance, and/or any other relief necessary, to allow the enlargement of a non-compliant lot by adding area and frontage and to structurally alter and enlarge a non-compliant, existing, single family dwelling, under Section 10.2 of the Zoning Bylaw, at 908 South East Street, Map 20D, Parcel 47 and Map 21C, Parcel 3, R-LD Zoning District.  
**ERIC BEAL CHAIR**  
**AMHERST ZONING BOARD OF APPEALS**  
June 11, '18  
32303883

**SITTING BOARD and VOTE TAKEN:**

To grant a Variance, ZBA FY2014-00038, to structurally alter and expand an existing single family dwelling and enlarge a non-compliant lot by adding area and frontage, at 908 South East Street and associated vacant parcel, with conditions.

Eric Beal – Yes                      Tom Ehrgood – Yes                      Mark Parent – Yes

**DECISION: APPROVED with conditions**

THE COMMONWEALTH OF MASSACHUSETTS  
AMHERST

City or Town  
**NOTICE OF VARIANCE**  
**Special Permit**  
**(General Laws Chapter 40A)**

Notice is hereby given that a Variance has been granted

To Margaret A. Riley  
Address 908 South East Street  
City or Town Amherst, MA 01002

Identify Land Affected: 908 South East Street (Map 20D, Parcel 47 & Map 21C,  
Parcel 3, R-LD/ARP Zoning District)

By the **Town of Amherst Zoning Board of Appeals** affecting the rights of the owner  
with respect to the use of the premises on

908 South East Street Amherst  
Street City or Town

The record of title standing in the name of  
Margaret A. Riley  
Name of Owner

Whose address is 908 South East Street Amherst MA 01002  
Street City or Town State Zip Code

By a deed duly recorded in the  
**Hampshire County Registry of Deeds:** Book 11464 Page 41  
or

**Hampshire Registry District of the Land Court**, Certificate No. \_\_\_\_\_,  
Book \_\_\_\_\_, Page \_\_\_\_\_

The decision of said Board is on file, with the papers, in ZBA FY2014-00038  
In the office of the Town Clerk Sandra J. Burgess

Certified this \_\_\_\_\_ day of \_\_\_\_\_

**Board of Appeals:**

Eric Beal (Board of Appeals) EB Chairman  
Tom Ehrsgood (Board of Appeals) TE Clerk

\_\_\_\_\_ at \_\_\_\_\_ o'clock and \_\_\_\_\_ minutes \_\_\_\_\_ m.  
Received and entered with the Register of Deeds in the County of Hampshire  
Book \_\_\_\_\_ Page \_\_\_\_\_

ATTEST \_\_\_\_\_  
Register of Deeds  
Notice to be recorded by Land Owner



## *Town of Amherst Abutter List*

<i>Parcel ID</i>	<i>Parcel Address</i>	<i>Owner1</i>	<i>Owner2</i>	<i>Address</i>	<i>City/St/Zip</i>
15D-253	ADAMS ST	HETZEL, VALERIE C		16 ADAMS ST	AMHERST, MA 01002
15D-75	ADAMS ST	HETZEL, VALERIE C		16 ADAMS ST	AMHERST, MA 01002
15D-80	15 ADAMS ST	MAHONY, KATHRYN J		15 ADAMS ST	AMHERST, MA 01002
15D-22	16 ADAMS ST	HETZEL, VALERIE C		16 ADAMS ST	AMHERST, MA 01002
15B-82	ALLEN MILL RD	ALDRICH, LOTA & HUBBARD, JESSIE	C/O DONALD MORAN	30 JENKS ST	AMHERST, MA 01002
15B-99	12 BAYBERRY LN	COLER, MING JUNG & ANDREW R		12 BAYBERRY LN	AMHERST, MA 01002
15B-101	16 BAYBERRY LN	MCGRAW, CATHERINE B		16 BAYBERRY LN	AMHERST, MA 01002
15D-110	18 BAYBERRY LN	KANE, JONATHAN J & CARDOZO, KAREN M		18 BAYBERRY LN	AMHERST, MA 01002
15D-113	20 BAYBERRY LN	GUNNELLS, PAUL E & GRAVANTE, CARMELA A		20 BAYBERRY LN	AMHERST, MA 01002
15B-51	15 HEATHERSTONE RD	KELTON, DIANE E		15 HEATHERSTONE RD	AMHERST, MA 01002
15B-50	27 HEATHERSTONE RD	DURFEE, JOHN	DURFEE, KIMBERLY GRAVES	27 HEATHERSTONE RD	AMHERST, MA 01002
15B-86	35 HEATHERSTONE RD	HART, ALLEN J & MARGARET M		35 HEATHERSTONE RD	AMHERST, MA 01002
15B-87	PELHAM RD	TOWN OF AMHERST CONSERV COMM		TOWN HALL	AMHERST, MA 01002
15B-41	231 PELHAM RD	MACDONALD, MICHAEL S & ANITA T		25 BUTTER HILL RD	PELHAM, MA 01002

<i>Parcel_ID</i>	<i>Parcel_Address</i>	<i>Owner1</i>	<i>Owner2</i>	<i>Address</i>	<i>CityStZip</i>
15B-1	234 PELHAM RD	JACKSON, ROBERT D		234 PELHAM RD	AMHERST, MA 01002
15B-42	239 PELHAM RD	SOLOMON, MARC J & ASHLEY L		14 LAURANA LN	HADLEY, MA 01035
15B-43	245 PELHAM RD	MELNECHUK, ANDREW T	REGE, JOSNA E	245 PELHAM RD	AMHERST, MA 01002
15B-44	251-253 PELHAM RD	MELNECHUK, THEODORE LIFE ESTATE		249-251 PELHAM RD	Amherst, MA 01002
15B-45	257 PELHAM RD	O'CONNELL, KILLIAN	C/O KILERINE PROPERTIES LLC	610 STATION RD	Amherst, MA 01002
15B-46	265 PELHAM RD	O'CONNELL, KILLIAN		610 STATION RD	Amherst, MA 01002
15B-2	266 PELHAM RD	NEWMAN, RICHARD & FLORA LEE		266 PELHAM RD	AMHERST, MA 01002
15B-48	275 PELHAM RD	MACDONALD, RICHARD A & ROBERT	MACDONALD, WILLIAM A	C/O M TIDLUND, 275 PELHAM RD	AMHERST, MA 01002
15B-3	276 PELHAM RD	HAWKOWL, MARK		276 PELHAM RD	Amherst, MA 01002
15B-52	289 PELHAM RD	THORNTON, THOMAS C		289 PELHAM RD	AMHERST, MA 01002
15B-67	294 PELHAM RD	PULVER, CHRISTIAN J		294 PELHAM RD	AMHERST, MA 01002